FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR.

Second Appeal No. 417 of 2005
(Gajanan Katuji Khandalkar Vs. Vidarbha Concrete Products Pvt. Ltd.)

Appeal
Application No.
Writ petition

District :
of 200

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's Orders

Ms. Tiwari h/f Mr. Anil Mardikar, Adv. for the appellant.

CORAM : Smt. Vasanti A. Naik, J.
DATE : 27th September, 2007

Heard Ms. Tiwari for the appellant.

The appellant is the original plaintiff. A suit was filed by the plaintiff for possession of the land admeasuring 0.58 R. It was the case of the plaintiff that the defendant had encroached upon 0.58 R of land belonging to the plaintiff. The plaintiff claimed to be the owner of Field admeasuring 83 R. It was pleaded by the plaintiff that on 23/8/1982, the plaintiff had got the land measured from a Government Surveyor and it was found that the defendant had encroached upon 0.58 R of land belonging to the plaintiff. It was then pleaded that the defendant also got his land measured on 29/5/1984 and that measurement also showed that the defendant had encroached upon 0.58 R of land belonging to the plaintiff. The plaintiff, therefore, sought the vacant possession of the suit land.

The defendant denied the claim of the

plaintiff and pleaded that the measurement was done by the Government Surveyor on 29/5/1984 behind the back of its officers and, therefore, an objection was taken to the measurement by letter dated 1/6/1984. The defendant was in possession of 2.66 hectares of land which it had purchased in the year 1975, but the Government Measurer had, in the measurement dated 29/5/1984, showed that the defendant had only 2.34 H.R. of land. According to the defendant, the aforesaid mistake had led to the incorrect measurement. After the defendant got his land re-measured from the Government Surveyor, the Government Surveyor refused to supply a map to the defendant on the ground that the matter was pending before the Court. The defendant pleaded that it had not encroached upon the land of the plaintiff and the suit of the plaintiff was liable to be dismissed.

The trial Court, on an appreciation of the evidence tendered by the parties on record, decreed the suit filed by the plaintiff and directed the defendant to hand over the encroached portion of the land admeasuring 0.58 H.R. In an appeal filed by the defendant against the judgment and decree passed by the trial Court on 30/9/1996, the first appellate Court reversed the finding recorded by the trial Court. The appeal was allowed by the first appellate Court by the judgment dated

15/4/2005. The first appellate Court, being final fact finding Court, re-appreciated the evidence tendered by the parties on record and held that the plaintiff had failed to prove that the defendant had encroached upon 0.58 H.R. of land belonging to the plaintiff. According to the first appellate Court, though the plaintiff had categorically pleaded in the plaint that the plaintiff had got the land measured in the year 1982 through the Government Surveyor and the map submitted by the Government Surveyor showed that the defendant had encroached upon 0.58 R of land belonging to the plaintiff, the plaintiff had failed to produce the map drawn by D.I.L.R. in the year 1982, before the Court. The Court then considered the fact that the D.I.L.R. had drawn the map on 29/5/1984 behind the back of the officers of the defendant and, therefore, the defendant had got the land re-measured. The first appellate Court relied on the second map drawn by the D.I.L.R. after the earlier measurement on 29/5/1984, to hold that in the earlier map of 29/5/1984, the Measurer had shown the defendant to be the owner of only 2.34 H.R. of land when the defendant was the owner of 2.66 H.R. of land. The area owned and possessed by the defendant was correctly shown in Exh. 127 and the appellate Court, therefore, gave more weightage to Exh. 127 i.e. last map drawn by the D.I.L.R. which correctly showed

the area owned and possessed by the defendant. The first appellate Court held that the defendant proved his possession over 2 H 66 R of land and also proved the map at Exh. 127 by examining D.W. 2. The first appellate Court, therefore, recorded a categorical finding that the Measurer who had measured the land of the defendant in the year 1984, had showed less area owned by the defendant and this fact led him to commit a mistake about the measurement of the land of the defendants. Thus, after considering the relevant evidence tendered by the parties on record, the first appellate Court held that the plaintiff had failed to prove that the defendant had encroached upon the land of the plaintiff.

The findings recorded by the first appellate Court are pure findings of facts which do not give rise to any substantial question of law.

Second appeal is, therefore, dismissed with no order as to costs.

JUDGE

RMP